

PROBATE & ESTATE PLANNING SECTION

July 2, 2007

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Approved Court Forms
P.O. Box 30048
Lansing, MI 48909

Re: Probate Forms Committee Meeting

Dear Sir or Madam:

The Probate and Estate Planning Council is proposing a new form and some changes in existing forms for discussion at the Probate Forms Committee Meeting scheduled for September 6, 2007. In general, we are proposing changes in the enclosed forms in order to engender uniformity of practice in the probate courts.

We have enclosed a proposed change to the Letter of Authority (PC 572) to add an instruction to state that the minimum fee for a Letter of Authority is \$12. MCL 600.2546 states that the fee for certified copies is \$10 plus \$1 per page. We have been advised that SCAO's interpretation of this statutory section is that the charge for each letter of authority should be \$12 or more, depending on the number of pages. Courts are charging from \$0 to \$12 for letters of authority. An instruction indicating that the minimum charge should be \$12 may resolve this uniformity of practice issue.

A new form entitled Affidavit of Incumbency is also enclosed. Some courts are requiring this form before an estate can be closed when estate assets are poured over to a trust, even though MCR 5.501(E) provides that a trustee "may" file an affidavit of incumbency when assets from a decedent estate are transferred to a trust. Attorneys are requesting a form to deal with this requirement. We have enclosed a proposed form entitled Affidavit of Incumbency with an instruction that filing the Affidavit of Incumbency is not required by statute or court rule.

Some courts are requiring that the petitioner file the form Testimony Interested Persons (PC 565) before the court will issue an order for a small estate. Pursuant to MCL 700.3982 the court may require additional

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information. Since this requirement of filing the Testimony Interested Persons often takes attorneys by surprise, we propose to add an instruction to PC 556 warning that the court may require that the petitioner file a Testimony Interested Persons be filed along with the Petition and Order for Assignment.

There is often confusion as to what type of guardianship petition to file for a disabled person. If the cause for certain conditions occurs before age 22, a Petition for a Guardianship for a Developmentally Disabled Individual (PC 658) should be filed rather than a Petition for Appointment of Guardian of Incapacitated Individual (PC 625). In order to help the clerks at the counter to flag this issue, we propose adding a line to the Petition for Appointment of Guardian of Incapacitated Person asking about the age that the disability occurred.

The problem of valuing joint property on a conservatorship inventory is still with us. In order to flag joint assets, we propose that a separate column be added to the inventory that the conservator can check if property is held jointly with others. We also propose adding an instruction that joint property should be valued at 100% of its value, with information about the other joint owners provided in the description of the property.

We appreciate the opportunity to make suggestions to the Probate Forms Committee and to submit proposed forms for approval. Please contact Joan Von Handorf at 248-421-0477 if you have any questions or suggestions.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas A. Mielock", written in a cursive style.

Douglas A. Mielock
Chair of Probate and
Estate Planning Section

Enclosures

STATE OF MICHIGAN
PROBATE COURT
COUNTY OF _____

LETTERS OF AUTHORITY FOR
PERSONAL REPRESENTATIVE

FILE NO. _____

Estate of _____

TO:

Name and address

Telephone no. _____

You have been appointed and qualified as personal representative of the estate on _____. You are authorized to do and perform all acts authorized by law unless exceptions are specified below. Date

☐ Your authority is limited in the following way:

☐ You have no authority over the estate's real estate or ownership interests in a business entity that you identified on your acceptance of appointment.

☐ Other restrictions or limitations are:

☐ These letters expire: _____
Date

Date

Judge (formal proceedings)/Register (informal proceedings)

Bar no.

SEE NOTICE OF DUTIES ON SECOND PAGE

Attorney name (type or print) Bar no.

Address

City, state, zip Telephone no.

I certify that I have compared this copy with the original on file and that it is a correct copy of the original, and on this date, these letters are in full force and effect.

Date

Deputy register

Do not write below this line - For court use only

MCL 600.2546

MCL 700.3103, MCL 700.3307, MCL 700.3414,
MCL 700.3504, MCL 700.3601,
MCR 5.202, MCR 5.206, MCR 5.307, MCR 5.310

The following provisions are mandatory reporting duties specified in Michigan law and Michigan court rules and are not the only duties required of you. See MCL 700.3701 through MCL 700.3722 for other duties. Your failure to comply may result in the court suspending your powers and appointing a special fiduciary in your place. It may also result in your removal as fiduciary.

CONTINUED ADMINISTRATION: If the estate is not settled within 1 year after your original appointment, you must file with the court and send to each interested person a notice that the estate remains under administration, specifying the reasons for the continued administration. You must give this notice within 28 days of the first anniversary of your appointment and all subsequent anniversaries during which the administration remains uncompleted. If such a notice is not received, an interested person may petition the court for a hearing on the necessity for continued administration or for closure of the estate. [MCL 700.3703(4), MCL 700.3951(3), MCR 5.144, MCR 5.307, MCR 5.310]

DUTY TO COMPLETE ADMINISTRATION OF ESTATE: You must complete the administration of the estate and file appropriate closing papers with the court. Failure to do so may result in personal assessment of costs. [MCR 5.310]

CHANGE OF ADDRESS: You are required to inform the court and all interested persons of any change in your address within 7 days of the change.

Fee for Letter of Authority: You must pay \$10 for certification plus \$1 per page, for a minimum fee of \$12.

Additional Duties for Supervised Administration

If this is a supervised administration, in addition to the above reporting duties, you are also required to prepare and file with this court the following written reports or information.

INVENTORY: You are required to file with the probate court an inventory of the assets of the estate within 91 days of the date your letters of authority are issued or as ordered by the court. You must send a copy of the inventory to all presumptive distributees and all other interested persons who request it. The inventory must list in reasonable detail all the property owned by the decedent at the time of death. Each listed item must indicate the fair market value at the time of the decedent's death and the type and amount of any encumbrance. If the value of any item has been obtained through an appraiser, the inventory should include the appraiser's name and address with the item or items appraised by that appraiser. [MCL 700.3706, MCR 5.310(E)]

ACCOUNTS: You are required to file with this court once a year, either on the anniversary date your letters of authority were issued or on another date you choose (you must notify the court of this date) or more often if the court directs, a complete itemized accounting of your administration of the estate. This itemized accounting must show in detail all income and disbursements and the remaining property, together with the form of the property. Subsequent annual and final accountings must be filed within 56 days following the close of the accounting period. When the estate is ready for closing, you are also required to file a final account with a description of property remaining in the estate. All accounts must be served on the required persons at the same time they are filed with the court, along with proof of service.

~~**ESTATE (OR INHERITANCE) TAX INFORMATION:** You are required to submit to the court proof that no estate (or inheritance) taxes are due or that the estate (or inheritance) taxes have been paid. **Note:** The estate may be subject to inheritance tax.~~

Additional Duties for Unsupervised Administration

If this is an unsupervised administration, in addition to the above reporting duties, you are also required to prepare and provide to all interested persons the following written reports or information.

INVENTORY: You are required to prepare an inventory of the assets of the estate within 91 days from the date your letters of authority are issued and to send a copy of the inventory to all presumptive distributees and all other interested persons who request it. You are also required within 91 days from the date your letters of authority are issued, to submit to the court the information necessary to calculate the probate inventory fee that you must pay to the probate court. You may use the original inventory for this purpose. [MCL 700.3706, MCR 5.307]

~~**ESTATE (OR INHERITANCE) TAX INFORMATION:** You may be required to submit to the court proof that no estate (or inheritance) taxes are due or that the estate (or inheritance) taxes have been paid. **Note:** The estate may be subject to inheritance tax.~~